

MAGNATUM

Apud ANGLOS

PRIVILEGIA:

OR, THE
PRIVILEGES and PREHEMINENCES

Belonging to our

ENGLISH PEERAGE.

Extracted from the

WRITINGS of the most Celebrated AUTHORS,
ANCIENT and MODERN;

VIZ.

*Britton, Fleta, Plowden, Bracton, Coke, Glanville,
Fitzherbert, Croke, Clarendon, Burnet, Nalson,
Rushworth, &c.*

Together with

Several REMARKS relating to our TEMPORAL PEERAGE, by way of
INTRODUCTION.



LONDON:

Printed for, and Sold by J. MORTIMER near Stationers Hall. MDCCLXXII.

(Price 1s.)

THE NATIONAL

ALBANY

PRINTING

PROVINCIAL AND TERRITORIAL

REVENUE

AND

GENERAL

PRINTING

AND

GENERAL

PRINTING

AND

GENERAL

PRINTING

AND

GENERAL

PRINTING

AND

GENERAL

PRINTING

AND

GENERAL



THE NATIONAL

ALBANY

T H E P R I V I L E G E S O F T H E

Superior Nobility, Lords of PARLIAMENT.

AS all the Degrees of the Superior Nobility (*viz.* Dukes, Marquesses, Earls, Viscounts, and Barons) were Originally derived from the Sovereign Power of our Monarchs. Kings, and Queens of *England*: Even so all the Honourable Immunities and Privileges, that by Law appertain unto the Temporal Lords of Parliament, had their Emanation, only at the first, from the Special Grace and Indulgencies of our Imperial Princes, the Supreme Legislators of this Nation.

Now, before a View of these great Privileges be tendered to the Reader, I shall presume to Acquit him, by way of Introduction, with some Considerable Remarks relating to our Lords Temporal, that are *Pares Regni*, and *Peers of Parliament*, which do here immediately follow.

R E M A R K I.

IT is an Establish'd Maxim, among such as have written of Policy, and of sundry Sorts of Government, ** That in all well-govern'd Commonwealths, a Distinction of Persons is absolutely necessary*: According to which it hath been the Politick Prudence of this our Nation, for the Sustentation and Regiment of the Common-weal of the same, to make a threefold Division of Persons, Namely,

The Policy of England how seen in the Distinction of Persons.

** Nulla Universitas potest subsistere, nisi nam Ordo servet et sustineat. Bod. de Rep. Lib. 3.*

1. The King, or Sovereign Monarch; under which Names also a Sovereign Queen is Comprehended, as it hath been declared, by a Law Enacted in the first Year of Queen *Mary's* Reign: So that the Regal Power thereby is asserted to be in a Queen, as well as in a King.

2. The Nobility, which do comprise Dukes, Marquesses, Earls, Viscounts, and Barons Spiritual and Temporal.

3. The Commons, by which general words are understood, Knights, Esquires, Gentlemen, Yeomen, Artificers and Labourers. *Co. Litt. fol. 16. 3. 109. B. & 156. B. Dodridge's Treatise of the Nobility, pag. 1.*

R E M A R K II.

THE Law of *England* calleth none Noble under the Degree of a Baron, and not as *None Noble* Men of Foreign Countries do use to speak, with whom every Man of Gentile Birth is reported Noble; for we daily see, that both Gentlemen, and Knights do serve in the Parliament, as Members only of the Communality. *Lambert's Justice of Peace, l. 4. c. 13. Co. Lit. f. 16. B.*

R E M A R K III.

NEITHER do these words, *the Nobles*, the High, or Great Men of the Realm, imply the Person and Majesty of the King. *Dyer 155. Crompton's Courts fol. 35. B.* But Nobles, do not with the *Civilians* the King or Emperor is reckoned among his Nobility: *cod. 12. 1. 8.* And why so? Because he should not be puffed up, with the Glory of his Place, and conceive he were of a more excellent Mould than the Rest, when indeed we are all One, and the self same Clay. *Sir Thomas Ridley's view of Laws: part 2. c. 1. Sect. 7. pag. 140. Edit. 4th. 1675.*

R E M A R K IV.

THE Superior Nobility are known by the general Name, *Of Peers of the Realm*, *Barons of the Parliament*, *Barons of the Realm*, and *Barons of Honour*, for difference of them, who yet, according to that Old Form of Barons, be commonly called Barons, as those of *Burford*, of *Walton*, of the *Exchequer*, and those who were Barons unto the Count

The several Names or Titles bestowed in the Greater Nobility.

The Privileges of the Superior Nobility, Lords of Parliament.

Palatines of Chester and Pembroke, that were Barons in Fee, and by Tenure. Camden's Britannia, fol. 196. Engl. Edit. 1610. and Finch lib. 2. cap. 1. pag. 86. Edit. 1627.

REMARK V.

All the Degrees of Nobility do sit in Parliament, in Right of their Baronies.

Dukes, Marquesses, and Earls, and all other of Nobility do sit together in the King's great Council in Parliament, as *Barons*, and in Right only of their *Baronies*. And therefore by the general Name of *Barons* of this Realm, and for the Baronage thereof, we do understand the whole Body of the Nobility, *Co. 2. Inst. fol. 61. and Camden's Brit. 169. Engl. Edit. 1610.*

REMARK VI.

The Parliament Robes of Dukes, &c. differ not from those of the Barons.

The Parliament Robes of Dukes, Marquesses, Earls and Viscounts do differ nothing from the Barons, but they wear the Guards upon their Shoulders Three, or Four-fold; for altho' Dukes, Marquesses, Earls, and Viscounts, in their Creation are tired with Garments of Silks, and Velvet; yet in the Parliament they use the same as Barons do, made with Scarlet, with diverse differences of White Furr, set with Fringes, or Edging on their Shoulders; for there they sit by Reason of their Baronies, and according to their Dignity take their Places. *Mr. Tho. Mills, fol. 66.*

REMARK VII.

A Baron is in Equipage as to Nobility and Privileges with Dukes and other degrees of the Peerage.

Altho' the Nobility of England in Titles, and by certain Ceremonies may be distinguished; yet a *Baron* is in Equipage, as unto Nobility, and Privileges incident to their Dignities, with Dukes, Marquesses, Earls and Viscounts, *Co. lib. 6. fol. 53. Countess of Rutlands Case.* And it is in ordinary Experience, That Dukes, and others of any High Degree of Nobility, in Cases Criminal, are tried by *Barons*, together with many Earls, and Viscounts, as their Peers, and Peers of the Realm, *Co. Lit. fol. 156. B.*

REMARK VIII.

The Title of Barons confined to those who were summoned by Writ of Parliament.

IN the Reign of *H. III.* the Title of *Baron*, which had been before promiscuous to Men of Estate, was first confined to such only, as by the King were call'd to have Voice in Parliament; But that which King *H. III.* began a little before his Death, His Son King *E. I.* and his Successors constantly observed, and continued. *Baker in vita E. I. Camden's Britannia, fol. 169. and Co. lib. 12. fol. 70. Lord of Abergavenny's Case.*

REMARK IX.

In 9. H. III. neither Duke, Marquess, nor Viscount in England.

AT the making of the Statute of *Magna Charta*, in *H. III.* Time, there was not any Duke, Marquess, or Viscount in England: and *Edward*, the Eldest Son of *E. III.* call'd the *Black Prince*, was the First Duke in England, after the Conquest, and *Robert Vere*, Earl of *Oxford*, in the Reign of *R. II.* was the first Marquess. And before the Reign of *H. VI.* There was not any Viscount. And the Lord *de Bellomonte*, or *Beaumont*, was the First Viscount, created by *H. VI. Co. Lit. 69. B. & 83. a. Co. 2. Inst. fol. 5. Camden Brit. fol. 165, & 167. 4 H. IV. N. 18. Cotton.*

REMARK X.

Honours of Peers not Alienable.

UPon a Debate (*Anno 1640.*) in the House of Lords, concerning a Power of Conveying away of Honour, it was resolved upon the Question, *Nemine Contradicente*, That no Person that hath any Honour in him, and Peer of this Realm, may alien, and transfer the Honour to any other Person.

Resolved upon the Question, *Nemine Contradicente*, That no Peer of this Realm can drown, or extinguish his Honour (but that it descend to his Descendents) neither by Surrender, Grant, Fine, or any other Conveyance to the King. *Dr. Nalson's Collect. 1. Vol. fol. 744*

REMARK XI.

ANno 1641. A Message was sent to the House of Commons, to desire a Present Conference by a Committee of both Houses, touching Honour.

The Subject of the Conference to be, That both Houses may petition his Majesty, that Titles of Honour may not be bought, and sold for Money, but that it may be Confirmed by his Majesty, as Antiently it was, for Vertue and Merit. Dr Nalsons 2 Vol. f. 325.

A Conference of the Lords to be with the Commons about the King's bestowing Honours.

REMARK XII.

ALthough the Laws of this Realm regularly do make all the Daughters, where there are no Sons, equally to inherit Lands and Tenements, and to be One Heir to their Ancestors; yet it is not so in the Descent of Dignities, and Titles of Honour; for Inheritances concerning matters of Honour, being things in their Nature participating of Superiority and Eminency, are not partable among many, and therefore must of Necessity descend unto One, and that is to the Eldest Daughter, Sister, Aunt, or Cousin Female, Inheritable, where there are no Heirs Males, that may Lawfully challenge the Same. Dodridge in his Treatise of Nobility and Peerage, pag. 169. Tit. Noblewomen. Camden's Britania fol. 165. Engl. Edit. 1610. Bracton Lib. 2. cap. 34. fol. 76. B. Co. Lit. fol. 165. a. Fleta lib. 5. c. 9. n. 16. pag. 313. Britton. cap. 72. fol. 186. B. 187. a. But some hold, that if a Baron dies, having Issue divers Daughters, the King (who is the Sovereign of Honour and Dignity) may confer the Dignity on him, that Marries any of them, as has been done in divers Cases. Co. lib. 12. fol. 3. Tit. Dignity. & Co. Lit. 165. a.

How the Descent in Honorary Titles is guided among Parents.

REMARK XIII.

A Question was moved in Parliament (Anno 16. Car. 1.) touching the Barony of Ruthen, where the Case was, That one being created Baron to him and his Heirs, hath Issue a Son and a Daughter by one Venter, and a Second Son by another Venter, and the eldest Son hath the Barony, and sits in Parliament, and afterwards Dies without Issue; whether the second Son shall have that Dignity, as Heir to his Father: Or the Sister should have it as Possessio Fratris in Lands, &c. and desired to have the Opinion of the Judges therein? And all the Judges resolved, that there is not any Possessio Fratris of a Dignity; but it shall descend to the Son; for the Younger Son is Heres Natus, and the Sister is only Heres Facta, by the Possession of her Brother, of such things as are in Demesne, but not of Dignities, and such like, whereof there cannot be an Acquisition of the Possession. Cro. Car. fol. 601. The Lord Grey's Case.

There cannot be Possessio Fratris of a Barony

REMARK XIV.

THe Greater Dignity doth never drown the Lesser Honour, or Dignity: But both do stand together in one and the same Person: And therefore if a Knight be created a Baron, yet he remains a Knight still: So if a Baron be made a Viscount, yet the Dignity of a Baron continueth: So if a Viscount be made an Earl, yet the Viscountship remaineth, & sic de ceteris: But if an Esquire (which is no Name of Dignity) be made a Knight, the Degree of the Esquire is changed and gone, and cannot so be Named in any Judicial Proceedings. Co. 2. Inst. fol. 594. & 669. Co. Lib. 4. fol. 118. a. Acton's Case 27. H. 64. 4. E. 410. 5. E. 4. 142. 35. H. 6. 12. 32. H. 6. 29. But it is agreed, (in Plowden's Com. 213.) That if the Crown of England do descend to a Duke, within England his Name of Duke is gone.

A Greater Dignity drowns not a Lesser.

REMARK XV.

THe Law of England doth prohibit any Subject of this Realm to receive Titles of Honour or Dignity of the Gift, or Donation of a Foreign Prince or King, or Emperor (without the Knowledge, Consent, and Approbation of his own Sovereign Prince;) for it is a Thing greatly touching the Majesty of the King, and the State of his Kingdom: It is the Right of Majesty, and among the Ensins of Sovereign Authority. And therefore such Titles of Honour are not to be accepted by Subjects, nor admitted by the Prince: That it belongs only to the Prince, and not to any other whatsoever, to distribute Dignities to their Subjects; according to that Saying of Valerian the Emperor,

Honour conferred by a Foreign Prince upon the Monarch of England's Subject without acknowledging him is not admitted.

The Privilege of the Superior Nobility, Lords of Parliament.

“Emperour, Let that Dignity only hold, which is born by our will. For much is detracted from the Princes Majesty, and the Subjects Obedience, if they may be permitted to receive Honours from Foreign Princes; for a Tacit Contract of Fidelity seemeth to pass between the Honourer and Honoured: That such Titles are secret Enticements to withdraw the Hearts of Subjects from their Princes; That an Action of Theft lies against him, that shall brand another Man's Sheep with his Mark, and an Action of Fraud against him, that by strewing of Food shall entice another Man's Sheep to his Flock.

The Conclusion of this Remark shall be the Judgment of Queen Elizabeth, touching the Title of Honour conferred by the Emperor on Thomas Arundel of Wardour, without her Majesties being acquainted with it; *Between Princes and their Subjects there is a most straight Tie of Affections. As chaste Women ought not to cast their Eyes upon any other Prince than him, whom God hath given them. I would not have my Sheep branded with another Man's Mark; I would not that they should follow the Whistle of a strange Shepherd.* Camden's Eliz. Anno 1596. pag. 467, 468. Engl. Edit. 1635. Camden's Britannia fol. 246. Engl. Edit. 1610. Baker's History in vita Eliz. pag. 408. Edit. 1660. and Camden's Eliz. Anno 1594. p. 435. Dr. Zouch de Judio inter Gentes pars 2. Sect. 2. p. 64, & 65. Ed. 1650.

REMARK XVI, and last.

What Trusts
and Ensigns
of Honour Ba-
rons have.

Dukes, Earls, and all others of the Degree of Nobility and Honour, have Offices of great Trust, and Confidence, being for two principal Purposes, *Ad consulendum Regi tempore Pacis*, To Counsel the King in time of Peace. The other, *Ad defendendum Regem, & Patriam tempore Belli*; to defend the King, and Country in time of War: And therefore Antiquity hath given unto them Two Ensigns to resemble both the said Duties: For the First, The Head is adorned with a Cap of Honour, and Coronet, and the Body with a Robe in resemblance of Council: Secondly, They are girt with a Sword, in resemblance, That they must be Faithful and True to defend the Prince and Countrey. *Co. lib. 7. 34. a. Nevill's Case, and lib. 12. f. 95. Countess of Shrewsburies Case, Co. 2. Inst. fol. 5, & 6. Bracton, lib. 1. c. 8. n. 2.* I will conclude this last Remark thus; The Ennobled amongst the Romans had a Badge of a Moon, or Crescent; in Plutarch's Judgment, not so much to signify the Instability or Frailty of their Place and Honour, as to put them in mind to be Obedient and Loyal to their Prince, the Fountain of their High Dignity, as the Sun is to the Moon, *Plut. in Probl. Probl. 72.*

Having given the Reader several Remarks concerning our Noblemen, I am now coming to give him a Declaration of the diverse and sundry Honourable Privileges and Immunities allowed unto them by the Laws and Customes of this Realm; and that both in, and out of Parliament.

And in order thereunto, it will not be impertinent in the first place to shew what a Privilege is, and how it is defined by several Authors; 1. *Freretus* defineth it, *Privilegium est Jus singulare, hoc est, privata Lex, quæ uni Hominis, vel Loca, vel Collegio, & similibus aliis conceditur.* In Paratitlis ad titulum Decretalium de Privilegiis.

2. *Gratian* thus; *Privilegia sunt Leges privatorum, quasi private Leges. Nam Privilegium inde dictum est, quia in privato feratur.* Decreti prima pars Distinctio 3. c. 3.

3. *Privilegium* (saith *Georgius Braudlacht Westph.*) est *Jus singulare, certæ personæ, vel rei, ob aliquam æquitatis rationem, contra Communes Juris normas, indultum.* lib. 7. c. 5. de Privilegiis.

4. Another tells us, *Quod Privilegium est quasi privata Lex, & contra dispositionem Juris Communis concessum.*

5. *Dr. Ridgely* saith it is an Immunity granted unto a private Man, beside the Law. His view of the Civil and Ecclesiastical Law, part 3. chap. 4. Sect. 1. Out of all which Authors, we may pronounce, That privileged Persons are such as are enriched with some special Freedoms, or Benefits, contrary to the common Course of Law.

PRIVILEGE I.

Trial by Record,
not by Jury.

A Baron, Viscount, Earl or other Lord of Parliament, and Peer of the Realm, being Plaintiff in any Action, the Defendant pleads, That the Plaintiff is not a Baron, Viscount, Earl, &c. As he is named in the Writ, This must not be tried at our Common Law by Jury, who may be corrupted, nor by Witnesses, as in the Court of Chancery, who may be suborned; But it must be tried by the Record in that Court, which imports by itself solid Truth: So great respect hath the Law to the Trial of their Honour and Dignity. *Co. lib. 12. fol. 94, & 95. Countess of Shrewsburies Case, and fol. 70. Lord Abergavenny's Case.*

The Privileges of the Superior Nobility, Lords of Parliament.

5

Case, Co. Lit. 16. B. Co. lib. 6. 53. Countess of Rutlands Case, & lib. 9. 49. Earl of Shrewsbury's Case, Co. lib. 7. 15. b. Calvin's Case, 6. H. 6. 46. Br. Challenge 18.

Notes on this PRIVILEGE

1. When a Title of Honour doth descend to a Woman, if Question in Law doth arise between the Noble Woman, and any other Person, whether she be of that Degree of Nobility or no, the issue shall be tried by the Record thereof, and by the King's Writ it shall be certified, and not by a Jury of 12. Men, even as it should be in Case her Ancestor had been party. *Doldridge's Law of Nobility, and Peerage, Tit. Noble Women.*

2. In the Case of acquir'd Nobility by Marriage, if the Question be, whether Dutchess or not Dutchess, Countess or not Countess, Baronesse or not Baronesse? The Tryal hereof shall not be by Record, as in the former Note, but by a Jury of 12. Men and the Reason of the diversity is, because the Dignity is accrued unto her by Marriage, which our Lawyers term Matter in Fact; and not by any Record, Co. lib. 6. fol. 53. a. Isabella Countess of Rutland's Case, 2 H. 6. 11.

P R I V I L E G E II.

FOR the Honour and Reverence, which the Law gives to Nobility, their Bodies are not subject to Torture, in *Causa Criminis laesæ Majestatis*: Co. lib. 12. fol. 95. Countess of Salops Case.

A Note on this PRIVILEGE.

By the Imperial Constitutions, the Nobility may not be put to the Rack or Torture, to discover the Truth, but vulgar or common Persons are in such Case liable to that Punishment: *Cod. 9. 4. 11, & 17, & Cod. 12. 1. 10.* But this Immunity of Noblemen holds only in matters of no great Moment; *Sed cum de crimine Majestatis queritur, nulla dignitas à tormentis eximitur. D. 48. 18. 10. 1. cod. 9. 8. 3.*

P R I V I L E G E III.

IF any Servant of the King in the Check-Roll, Compass, or intend to kill any Lord of Parliament, or other Lord of the King's Council, this is Felony: 3 H. 7. 14. Co. lib. 22. fol. 95. Countess of Shrewsburies Case, Co. 3. Inst. fol. 37.

P R I V I L E G E IV.

AT the Suit of the Subject the Bodies of Noblemen, Lords of Parliament shall not be Arrested; neither *Capias* nor *Exigent* lyeth against them: Co. lib. 12. fol. 95. The Countess of Shrewsburies Case: *Crompton's Courts*, 14. a. Edit. 1594. *Camden's Britannia*, 169. *Engl. Edit.* 1610. Co. lib. 9. 49. Earl of Salop's Case, *Finch's Law* lib. 4. c. 26. p. 354. *Br. Exigent*. 72. *Stiles Reports*, 234, & 252. The Case of the Countess of Rivers, Co. lib. 6. 53. Countess of Rutlands Case. This Privilege belongs also to our Spiritual Lords, the Bishops, in respect of their Baronies.

Notes on this PRIVILEGE B.

1. The Reason why Noble Peers, are privileged from Arrests, is grounded on presumption of Law, That The most Honourable, are likeliest, to be right Honest, and pay even before demand; and likewise, that their Fortunes, are sufficient to satisfy, without Attaching their Persons, Co. lib. 6. 52. B. The Countess of Rutlands Case, *Moor's Reports*. 765. n. 1063. Countess of Rutlands Case, *Finch's Law*, lib. 4. c. 26. pag. 354. *Stiles Reports*, fol. 222. *More v. Earl of Rivers. Br. Exigent* 72.

2. If the Court of Common Pleas in a Debt doth award Plea of a *Capias* against a Baron, or other Peers of the Realm, which by the Law doth not lie against them; and the same appeareth in the Writ it self, yet if the Sheriff Arrest them by Force of the *Capias*, although that the Writ be against Law notwithstanding, in as much as the Court hath Jurisdiction of the Cause, the Sheriff is excused, Co. lib. 10. 76. B. The Case of *Marshalsea*, 38. H. 8. *Dyer*, 60. B. Co. lib. 6. 54. a. Countess of Rutlands Case.

The Killing of an Officer in executing a Capias, that is Erroneous adjudged to be Murder.

3. If a Capias in an Action of Debt, be Awarded against a Baron, or other Peer of the Realm, which is Erroneous, (because their Body by the Law is privileged in such Cases) yet, if the Officer be Kill'd in Execution thereof, it is Murther, for the Officer is not bound to dispute the Authority of the Court, which awardeth the Process; but his Office is to execute the Process. *Co. Lib. 9. fol. 68. Mackalley's Case.*

Capias lies against a Peer for a Contempt.

4. For Contempts a Capias lies against a Peer of the Realm: As for Rescuing of one Arrested by the Course of Law. 27. H. 8. 27. *Crompton's Courts fol. 14. a.* So a Capias pro fine, lies against a Nobleman; for none can be privileged against the King. *Cro. Eliz. fol. 170. Lord Stafford v. Thinne & fol. 503. Earl of Lincoln against Flower.*

In what Case the Writ de Homine replegiando, and of Withernam lie against a Peer.

5. If a Lord of the Parliament, doth with Force and Arms, detain a Man in Prison, in his House, or elsewhere, the Remedy in such Cases, by himself, or his Friends abroad at Liberty, to have a Writ called *De Homine replegianda*, to deliver him: But if the Lord, to prevent the Execution thereof, and, of Malice, do Keep, or Convey away this same Man, so wrongfully Imprisoned, so privily, as that the Sheriff cannot Execute his said Writ: Then will the Court award a *Withernam*, whereby the Sheriff shall Attach and Arrest the Body of the said Lord, and Imprison him, until he do deliver his said Prisoner. 11. H. 4. 15. *F. N. B. 68. Crompton's Courts fol. 20. a. Hobart's Rep. fol. 61. Foster, v. Jackson.*

PRIVILEGE V.

To be exempt of Juries, and empanell'd upon Enquests.

Noblemen, and Lords of Parliament, are not to be Empanell'd upon the Common Jury of twelve Men, for the Enquest de Facto. *Br. Exemption 3. and Challenge 37. 27. H. 8. 27. Crompton's Courts 14. a. co. lib. 6. 53. Countess of Rutland's Terms of Law f. 161. b. Tit. Exemption. co. lib. 9. Earl of Shrewsbury's Case, Dyer 314 p. 1. 98. Co. Lib. 12. 95. Countess of Shrewsbury's Case. Camden's Britannia 169. Engl. Edit. 1610. Co. Litt. fol. 156. B.*

A Note on this PRIVILEGE.

A Special Writ in the Register to discharge a Peer from serving in Juries.

In Case a Lord of Parliament be returned upon a Common Jury, there is a Special Writ for his Discharge: And this may be directed either to the Sheriff, not to put him into Juries, or to the Judge to Discharge him: But if a Peer of the Realm be returned, he must be Sworn, or lose Issues, if he appear not, unless he bring the Writ. *Register 179. B. F. n. B. 165. A. D. Finche's Law Lib. 4. c. 48. pag. 506. Co. Lib. 6. 53. Countess of Rutland's Case.*

PRIVILEGE VI.

Knight returned on his Jury.

IN the Common Pleas, a Temporal Lord of Parliament shall have Knights returned on his Jury. *Co. Lib. 12. 95. Countess of Shrewsbury's Case & Lib. 6. 53. Countess of Rutland's Case. Dodridge in his Treatise of Nobility fol. 145. Edit. 1658. 4. Eliz. Dyer 208. Plowd. Com. 117. a. E. of Derby's Case. Syderfin 2. Part. fol. 31. Earl of Leicester's Case. 13. E. 3. Inquest 44. 27. H. 8. 22. b. Finch's Law Lib. 4. c. 36. pag. 412. Br. Challenge 5. and Trial 142. Crompton's Courts 14. a. & 20. a. 8. 9. 1. 437. 34. H. 6. 18. Fitzb. Challenge 113. Modern Reports 1. pt. 226. Br. Enquest. 100. Br. Novel Cases N. 88. This Privilege is Incident to the Bishops, as Peers of the Realm.*

If upon the Non-Return of a Knight, there is a Challenge of the Array, this shall quash all the Array, as to the other Defendants.

Notes on this PRIVILEGE.

A Knight, if returned, not material, whether he appear.

1. Where there are Divers Defendants, whereof One is a Lord of Parliament, and the Array is challenged, by Reason no Knight is returned, this shall serve to Quash all the Array against the other Defendants also, for that it is Entire. *Dyer 246. Crompton's Courts fol. 20. B.*

A Serjeant at Law, that is a Knight, when his Privilege is not allowable.

2. If a Knight be returned on a Jury, when a Nobleman is Concerned in a Suit, it is not Material, whether he Appear and gives his Verdict, or not. 1. *Modern 226. Southcot 2. Stowel. Crompton's Courts fol. 20. B.*

3. If there be no other Knights in the County, a Serjeant at Law, that is a Knight, may be returned, and his Privilege shall not excuse him. 2. *Mod. 182. The Countess of Northumberland's Case.*

4. If a Noble Peer of the Realm be Plaintiff, and a Common Person Defendant, they joyn Issue, and two Knights are not returned in the Jury between them, as there ought to be, the Defendant may Challenge the Array of that Jury, as well as our Peer. *Mich. 33 & 34 Eliz. Anderson 1. part 272. N. 281.* When no Knights are returned, the Defendant a Common Person may challenge the Array, as well as a Peer Plaintiff.

5. The Earl of Kent by the Name of Reginald Grey Esquire, brought a Writ of Entry against H. G. and the Pannel was returned: Now by the Heralds, he was then newly declared Earl, and thereupon he Challeng'd the Array, because there was no Knight returned in the Pannel: But it was not allowed by the Court; for that there was no Default in the Sheriff, he being commonly reputed an Esquire. *Dyer 318. pl. 10. Crompton's Courts fol. 20. B.*

PRIVILEGE VII.

NO Effoin, or Day of Grace, is to be granted to Plaintiffs, in Suits or Actions; where in Noblemen, Lords of Parliament, are Defendants. *Camden's Britannia 169. Engl. Edit 1610. 27. H. 8. 27. Crompton 14. a. co. lib. 9. 49. Earl of Salop's Case. 27. E. 3. 88. 27. H. 8. 22.* This Privilege is Incident to the Lords Spiritual, as well as to the Lords Temporal. Effoin lies not against a Peer.

Notes upon this PRIVILEGE.

1. The Reason of Immunity, is, for that thereby a Nobleman should be no longer delayed, than the Ordinary Course of the Court is, and such a Lord is to have Expedition of Justice, in respect he is to Attend the Sacred Person of the King, and the Service of the Commonwealth. *Co. Lib. 9. fol. 49. Earl of Shrewsbury's Case.* Reason why a Nobleman an Effoin lies not.

2. If there be no Ignoble Person, Party to the Suit, the Judges do, and may at their Discretion, grant upon Motion and Prayer, a Day, or more, of Trial otherwise, than by the Strict Course of the Law the Plaintiff may Challenge. *Doddrige's Treatise of the Nobility pag. 144. Edit. 1658.* When the Judges may grant, upon Prayer, a Day, or more.

3. In case a Baron, or Baronefs, Earl, &c. have their Absence excused by Effoin, He who casts such Effoin, or Excuse, ought to find Pledges, that the Effoin is true; but in the Case of a Common Person, it shall rest upon the Credit and Integrity of the Effoinator: And the Reason of such Diversity is this; for that Noblemen, in warrantizatione Effoinii, do not Swear by themselves, but by their Proxies, viz. Their Pledges, &c. *Bracton Lib. 5. Tract 2. de Effoiniis. c. 9. Nu. 3. fol. 351. B. & c. 2. N. 3. f. 337. B. Britton c. 1 22. fol. 282. a. Fleta Lib. 6. c. 10. nu. 15. Co. 2. Inst. 137.* To what Effoins one shall be sworn, and to what not.

PRIVILEGE VIII.

Noblemen, Peers of the Realm, and Lords of Parliament, are exempted from Attendance at the Sheriffs Tourn, or at any Court Leet, or to take there the Oath of Ligeance. *Statute of Marlebridge cap. 10. Finch's Law Lib. 4. c. 1. pag. 242. Britton cap. 29. f. 73. B. Co. 2. Inst. fol. 120. & 121.* And so are Bishops from Attendance at Tourns and Leets. Exemption from Attendance at Tourns or Leets.

Notes on this PRIVILEGE.

1. Every Man of the Age of 12 Years, and upwards, (being within the Precinct of Leets) oweth Suit, and must be Sworn to the King's Allegiance; and this is called a Suit Real, being not Due by reason of Mens Freehold, but of their Body, because they are resident within the Precinct of the Leet. *Britton cap. 29. fol. 73. B. F. N. B. 161. 12. H. 7. 18. 25. E. 3. 236. Co. Lib. 7. fol. 6. & 7. Calvin's Case. Co. Litt. 68. B. Fleta Lib. 1. cap. 5. Nu. 4. Co. Litt. fol. 172. B.* Infant at 12 Years bound to take the Oath of Ligeance in the Leet.

2. Albeit Noblemen be exempted from their Personal Coming to the Tourn and Leet, and many other Persons never took the Oath of Allegiance, yet are all Subjects of what Quality, Profession, or Sex soever, as firmly obliged to their Allegiance, as if they had taken the Oath, because it is written by the Finger of the Law of Nature, in every one of them, and why. Persons that never have taken the Oath of Ligeance, are as much bound to their Ligeance, as if they had taken it, and why.

of their Hearts, and the taking of the Corporal Oath, is but an outward Declaration of the same. *Co. 2. Inst. fol. 121.* The substance and effect of that Legal Ligeance (say the Learned Judges in *Calvin's Case*) is due by the Law of Nature, *Ex Institutione Naturæ*, the Form and Addition of the Oath is, *ex provisione Hominis*.

PRIVILEGE IX.

Exemption
from taking
the Oath of
Supremacy.

By the Statute of 5 Eliz. c. 1. It is Enacted, That every Knight, Citizen, and Burgess of the Parliament shall take the Oath of Supremacy before the Lord Steward, or his Deputy; but it is not required of any of the Temporal Lords, because the King is otherwise sufficiently assured of their Faith, and Loyalty, as is presumed.

PRIVILEGE X.

Making
Proxies.

A Temporal Peer of the Realm summoned to Parliament, in his Absence lawful, and Licence of his Prince may appoint a Proxy, to Vote for him, which none of the House of Commons can do, *Co. 4. Inst. fol. 12. 21. E. 4. 50. Davies Reports, fol. 47. B. Le Case, de Capitulariter Congregatis, The Bishops, Lords of Parliament, do enjoy this same Privilege.*

Notes upon this PRIVILEGE.

The making
Proxies by the
Peers, shews
their Right to
be summoned.

1. Those Lords that would not appear, according to their Summons, made their Proxies, and even this shews their Right to be summoned, else what needed their Proxies, *Elfing, cap. 5. of Proxies.*

Lords amerced
if they appeared
not at the Par-
liament either
Personally or by
Proxies.

2. If the Temporal Lords of Parliament neither came, nor made Proxies, then for their disobedience unto the King's Writ, they were Amerced, viz. Antiently an Earl at 100*l.* and a Baron at 100 Marks; which since was qualified many times, viz. *An. 21. H. 6. c. 46.* A Duke was taxed at 100*l.* an Earl at 100 Marks, and a Baron at 40*l.* if he came not to Parliament, *Elfing c. 5. of Proxies.*

He that receives
a Proxy must
be a Member of
the Lords House,
and no stranger.

3. Tho' in the High Court of Parliament, our Temporal Barons may give their Votes by *Procuracy*, or *Proxy*, yet the Proctor ought to be a Baron, and Member of the same House, for a stranger is not capable of such Proxy: *Davys Reports, 47. B. Case, de Capitulariter Congregatis*; which is, according to the Rules of the Canonists, namely, *Absens non potest demandare Votum nisi nni de Capitulo*: Instit. Juris, Can. lib. 1. cap. Electi-
onibus.

*Oportet quod procurator semper institutus sit de Collegio.
Votum dari non potest per Literas.*

A Proxy must
not be made to a
Peer, that is ab-
sent himself.

4. A Proxy cannot be made to a Lord, that is absent himself; for instance; The Lord Latimer sent his Proxy, which the Clerk refused, but was repealed, by the Lord Chancellor, for that the Lord Latimer's Deputies were not present: *Elfing c. 5. of Proxies.*

A Lord to whom
a Proxy is made,
if afterward ab-
sent, the Proxy
is invalid.

5. If a Lord, unto whom the Proxy is made, be afterwards absent, the Proxy is void, yea, altho' the Procurator be absent *ex Licentia Regis*, and hath made a Procurator also for himself, for the Proxy is but an Authority to give another Man's assent which cannot be transferred to a Third Person: *Elfing c. 5. of Proxies.*

A Peer maketh
a Proxy to three
Lords, and one
of the Proxies
gives consent,
the other two
say, not con-
tent, this is no
Voice.

6. A Lord of Parliament, by Licence obtained of the Sovereign, made a Proxy to Three Lords of Parliament. *Conjunctim, & divisim, dans eis potestatem tractand. tractatibusque auxilium & Consilium impendendi, atque Statutis, & Ordinationibus, quæ inactitat, contigerint, consentiendi, ita quod non sit melior conditio occupantis.* And or of the Procurators gave consent to a Bill, and the other two said, Not Content: An first it was by Order of the Lords debated among the Judges and Civilians Attendants, and conceived by them, that this was no Voice, and the Opinion was affirmed by all the Lords of Parliament. *Seriatim.* At the Parliament holden *An. 1 Eliz. C. 4. Inst. fol. 12, & 13.*

7. At the same time another Question was started, That if a Lord of Parliament make a Proxy, and after come into the Lords House of Parliament, and sit there without Arguing, Consenting, or Speaking any thing: And it was conceived by the Judges, and Civilians, that his sitting there without saying any thing, was a *Revocation* in Law of his Proxy; *a fortiori*, if he moved, or spake to any matter there propounded; and their Opinion was resolved by the Lords *Seriatim*, Co. 4. Inst. fol. 13.

A Lord that makes a Proxy; comes after into the House, and sits there without speaking any thing, adjudged a Revocation in Law of the Proxy. Ordered, that no Lord can be capable of receiving above two Proxies.

8. In the Year 1626. 2 Car. I. the House of Peers made an Order, That for the future no Lord of the House shall be capable of receiving above Two Proxies, nor more to be numbred in any Cause Voted. *Rushworth's Historical Collections*, 1. part. fol. 273.

PRIVILEGE XI.

When the King doth summon a Duke, Earl, or any other Peer of the Realm, of the Parliament, He sends his Writ, directed to himself particularly, and not to the Sheriff of the County, as the general Summons are for Knights and Burgeses for the Parliament. Co. 4. Inst. 4. and *Dodridges Tract of the Nobility*, pag. 25, & 26. Tit. of Earls. Every Spiritual Lord of Parliament, as well as the Temporal, ought to have several Writs of Summons.

of Summons to Parliament directed to the Peerage Temporal.

PRIVILEGE XII.

No Temporal Peer and Lord of Parliament, sitting in Parliament, or within the usual time of privilege of Parliament, is to be imprisoned, or restrained without Order from the House, unless it be for Treason, Felony, or refusing to give security for the Peace. *Elsing's method of holding Parliaments*, c. 7. pag. 178. Edit. 1660. Baker in vita, Car. I. fol. 468. Edit. 1660. The Earl of Arundel's Case. This preheminance appertains to our Bishops as well as to our Temporal Lords of Parliament.

Imprisonment of a Temporal Lord in Parliament time.

PRIVILEGE XIII.

The House of Lords are the Interpreters of Acts of Parliament, in times of Parliament.

Interpreters of Acts during Parliament.

OR,

It belongs to the House of Peers, by the Ancient Laws, and Constitutions of this Kingdom, to interpret Acts of Parliament, in time of Parliament, in any Cause, that shall be brought before them. *Dr. Nalson's Collections*, 2. Vol. fol. 625. Our Spiritual Lords of Parliament have their share in the interpreting Statutes in Parliament time.

PRIVILEGE XIV.

If Writs of Error be brought in Parliament upon Judgments given in the King's Bench, the Lords of the Higher House alone, without the Commons are to Examine, and amend the Errors, Co. 4. Inst. 21. *Finch's Law*, lib. 4. c. 36. pag. 483. *Filmer's Patriarcha*, pag. 140, 141. Edit. 1680.

Writs of Error. Under the Lords of the Higher House are comprehended the Bishops.

A Note upon this PRIVILEGE.

The Lords finding themselves extremely pressed by the bringing Writs of Error upon Judgments into their House, whereby the publick Affairs were much retarded, made this Order, June, Anno 1641.

Order of the Lords about Writs of Error.

“ Ordered, That such Persons that bring in Writs of Error into this House upon a Judgment given in a Court of Justice, and if it appear that there is no just Cause of Error in the said Judgment, but merely for delay of Justice and Execution, that then such Costs is to be given against the Parties, that bring the Writ of Error, as the

D

“ House

The Privileges of the Superior Nobility, Lords of Parliament.

"House shall think fit to give in that Case : And that the Record shall be Remitted, whence it came, that the Defendant may take out Execution. *Dr. Nalson's 2. Vol. fol. 272. vide the manner how a Writ of Error is brought into the Lords House, and how there Amended. Nalson's Collections, 1. Vol. 651. Co. 4. Inst. fol. 21. Finch's Law Lib. 4. cap. 47. pag. 482. 489.*

PRIVILEGE XV.

Lords of Parliament are properly De magno Concilio Regis.

THe Monarch, King, or Queen of England, is armed with divers Councils, whereof one is called, Magnum Concilium Regis, which is always applied to the Upper House of Parliament, and sometimes, out of Parliament to the Peers of the Realm, who have been summoned, alone to give their Sovereign Advice, in Matters propounded to them. *Co. Litt. fol. 110. a. Elsing c. 1. pag. 51. & 52. Co. 3. Inst. fol. 125. 27. Aug. 5. H. 4. in the Exchange between the King and E. of Northumberland, in Turre. Co. 4. Inst. 65. Note the Parliament is always called, Commune Concilium Regis.*

PRIVILEGE XVI.

No Supplicavit, &c. can be granted against our Nobility.

Noblemen, Peers of the Realm, and Lords of Parliament, are not to be Arrested by any Warrant of any Justice of Peace, or for the Good Behaviour, nor by a Supplicavit out of the High Court of Chancery, or from the King's Bench; for such an Opinion our Law conceived of the peaceable Disposition of Noblemen, that it hath been thought enough, to take their Promise upon Honour, in that Behalf. *Lambert's Justice of Peace, Lib. 2. c. 2. 24. E. 3. 33. Subpena Fitzh. 20. Camden's Britannia 169. Engl. Edit. 1610. Dodridge's Treatise of Nobility, f. 139 & 140. Edit. 1658.*

A Note upon this PRIVILEGE

A Lord ordered to find sureties for the Peace; the Parliament but adjourned.

On Articles of Peace, one Coleman demanded, that the Lord Gerrard might find Sureties, which the Court granted, albeit he was a Peer, and the Parliament but adjourned, so that by this Precedent, a Sitting Peer may be bound to the Good Behaviour. *2. Keble 435. Nu. 74.*

PRIVILEGE XVII.

Expences of Knights.

Lords of Parliament are not to contribute to the Expences of the Knights of the Shire, that come to Parliament. *28. E. 3. N. 23. Cotton 11. H. 4. 2. B. Crompton's Courts. fol. 17. B. 18. a.*

PRIVILEGE XVIII.

In Offices of Trust, their Right of appointing Deputies.

In all Places, or Offices of Trust, committed to Peers and Lords of Parliament, they are allowed to make Deputies, by reason of the Necessity, supposed in the Law, of their Attendance on the Person of their Sovereign, both to Assist him with their Counsel for the Commonwealth, and also to keep him and the Realm in Safety, by their Prowess and Valour: But otherwise the Law is, if an Office, or Place of Trust, be granted to a Common Person, as a Stewardship or Parkership; for he cannot Exercise the same by Deputy, unless the Grant be so made. *Co. Lib. 9. fol. 49. The Earl of Shrewsbury's Case. Perkins Sect 99. & 100. Terms of Law 117. B. Tit. Deputy.*

PRIVILEGE XIX.

Suppressing Riots, Routs, or Unlawful Assemblies.

In the Statute made in 2. of H. 5. c. 8. Authority is given to the Sheriffs, and other the King's Justices, for the better suppressing of Riots and Routs, &c. to raise Posse Comitatus, the Power of the County; yet may not the Sheriff, upon such Authority, command the Person

mentioning in the Writ their Titles of Honour, which they had before; for those they have lost, by marrying Common Persons, *Crompton*, fol. 33. *B. Tit.* Star-Chamber. The Womans Lawyer, lib. 3. sect. 5. pag. 125, & 126. *Owen's Reports*, fol. 81, 82. Dutcheffs of *Suffolks Case*, Co. Litt. fol. 16. *B. Dyer*, 79.

PRIVILEGE XXIII

Quorum
Justices.

By the Statute of 2 H. V. It is Enacted, That the Justices of Peace in every County, named of the Quorum, must be resident in the Shire, wherein they are Justices: But there is a Proviso in that Law, by which the Lords, and Peers of Parliament named in such Commissions are excepted, 2 H. V. Parl. 2. cap. 1. Spiritual Lords of Parliament that are in such Commissions, are excepted as well as the Temporal Lords.

PRIVILEGE XXIV.

Trial by
Battel.

Against a Peer of the Realm bringing an Appeal, the Defendant shall not wage Battel, much less against the King, either upon an Indictment, or Appeal. *Finch's Law*, lib. 4. cap. 37. pag. 423. *Discourse of the Customs of London*, fol. 13. *Stamford's Pleas of the Crown*, fol. 108.

PRIVILEGE XXV.

Statutes of
Bankrupts.

NO Noblemen, that have Stocks in the East-India or Guinea Company, are to be taken, or reputed Merchants, within any of the Statutes of Bankrupts, 14 Car. II. c. 24.

PRIVILEGE XXVI.

Clergy Benefit.

Temporal Lords of the Parliament in all Cases, where Clergy lyeth at the Common Law, or is restrained by Statute, shall upon their Prayer be adjudged as a Clerk Convict, though they cannot Read, 1 E. VI. cap. 12. *Finch's Law*, lib. 4. c. 45. pag. 466. *Syderfin*, 1. part. fol. 277. *Stamford's Pleas of the Crown*, lib. 2. c. 43. fol. 129. *B. Levinz*, 1 part. fol. 180.

Notes on this PRIVILEGE, taken from Judge Dodridge's Treatise of NOBILITY.

In what Cases
Lords have the
privilege of their
Clergy, where
Commons have
not.

1. By the aforesaid Statute, a Lord of Parliament shall have the Privilege of his Clergy where a common Person shall not, viz. For the Breaking of a House by Day or Night: or Robbing any in the High Way, and in all other Cases, excepted in the Statute of 1 E. VI. c. 12. Saving in wilful Murder and Poysoning.

A Lord shall
not have the
Benefit of
1. E. VI.
unless he re-
quire it.

2. In all other Cases, wherein Clergy is taken away by any Statute made since the said Act of 1 E. VI. He is in the same degree, that a Common and Inferior Person is, but the Court will not give him the Benefit of this same Statute, if he do not require it.

A Lord of Par-
liament in Case
of Confession
upon Arraign-
ment, or Abju-
ration, or Out-
lawry for Felo-
ny, he may have the

3. If the Lord of Parliament doth confess his Offence upon his Arraignment, or doth abjure, or is outlawed for Felony, it seems that in those Cases he may have the benefit of this Statute, viz. His Clergy; for that by the Statute of 18. Eliz. cap. 18. He, nor any other need to make his Purgation, but shall be forthwith delivered out of Prison by the Justices.

Benefit of Clergy, since the Statute of 18. Eliz. c. 18.

PRIVILEGE XXVII.

IN Treason, it hath been an ancient Use and Favour from the Kings and Queens of Capital Amputation; Decollation or Beheading; and to make Warrant for their Beheading, Lord Bacon's Cases of Treason, lib. 1. cap. 1. fol. 130. annex'd to Sir Robert Holborn's Learned Readings, pr. 168. Co. Lib. 1. fol. 130.

Notes upon this PRIVILEGE.

1. When a Nobleman is attaint of Treason, and hath passed on him, the Judgment in Case of High Treason, viz. of Drawing, Hanging and Quartering, the Course is, That the Sovereign makes his Letters Patents directed to the Lord Chancellor, or Lord Keeper, Reciting the Attainder, *for we mind to dispense with that manner of Execution of Judgment, in respect that the said A. B. a Nobleman do therefore by these Presents remit, and release the said A. B. of, and from such Execution of Judgment, and instead thereof, our Pleasure is, to have the Head of the said A. B. cut off, &c. as in such Cases has been used, touching or concerning Noblemen; And by the same do require the Lord Chancellor, or, &c. to make Two Writs under the Great Seal, one to the Lieutenant to deliver the said Prisoner, and the other to the Sheriff of London, to receive, and Execute the said Prisoner, &c.* Co. Lib. fol. 130. Edit. 1677.

2. It has been said, and it passes for a Maxim in Law, That though in Judgments of Treason the King can order the Execution to be by Cutting off the Head, since it being a part of the Sentence, that the Head shall be severed from the Body, the King may in that Case remit all the other parts of the Sentence except that; yet in Felonies the Sentence must be Executed in the way prescribed by Law; and that if the King should Order Beheading instead of Hanging, it would be Murder in the Sheriff, and those that Execute it. But this seems to be taken up without good grounds, and against clear Precedents; for in the Reign of E. VI. The Duke of Somerset, though condemned for Felony, yet was Beheaded. And in the Reign of King Charles the First, the Lord Audley being likewise condemned for Felony, all the Judges delivered their Opinion, That the King might change the Execution from Hanging to Beheading, which was done, and was not afterwards questioned. So in 31. H. VIII. The Lord Hungerford of Humberbury was attainted of Buggery, and had Judgment to be hanged by the Neck, until he was dead; and yet was Beheaded on Tower-hill. By which instances it is evident, that it is in the King's Power to change the Execution from Hanging to Decollation, or Beheading. But we find in History, That some Lords have not met with the usual Privilege belonging to the Nobility; For Thomas Fines, Lord Dacres of the South, in Anno 33. H. VIII. was Attainted of Murder, and had Judgment to be hanged by the Neck, until he was Dead, and according to the Judgment was hanged at Tyburn; and so the Lord Sturton in 35. & 4. Ph. & Mar. was Attainted of Murder, and had Judgment to be hang'd until Dead, and according to that Sentence, he was hang'd. Conf. 52. & 211. Dr. Burnet's History of the Reformation, part. 2. lib. 2. pag. 350.

PRIVILEGE XXVIII.

IT is a Preeminence Incident to an Earl, or other of Degree above him, for our Majesty, Kings, and Queens of England, to salute him, by the name of their Cousin, although peradventure he be of no Consanguinity to our Sovereign Princes. Camden's Eliz. Anno 1567. pag. 84. English Edition, 1635. Dodridge's Treatise of the Nobility, pag. 35. Tit. Earls. Co. lib. 9. fol. 49. a. The Earl of Shrewsbury's Case.

A Note on this PRIVILEGE.

The Reason why
Earls and other
Degrees above
them, have been
and are saluted
with the Name
of Cousin, by the
Kings of Eng-
land.

The Title of Earl, was the most Eminent, and Supreme Dignity, before the Conquest, until 11. E. 3. where the Black Prince was created Duke of Cornwall; and those, who of Ancient times, were created Earls, were of the Blood Royal: And even to this Day, the King in all his Appellations, doth Stile them, per Nomen Charissimi Consanguinei Nostri.

PRIVILEGE XXIX.

The Searching
of the dwelling
House of a Peer,
where he or his
Wife are Resi-
dent.

NO Dwelling House of any Peer of this Realm, whilst he, or his Wife be there Resident, shall be searched, but by immediate Warrant from the King, under his Sign Manual, or in the Presence of the Lieutenant of the County, or one of the Deputy Lieutenants, or two Justices of the Peace, whereof one to be of the Quorum. 16. Car. II. cap. 4.

A Bishop is a Peer of the Realm, and therefore he must have the same Privilege.

PRIVILEGE XXX.

Search for
Arms.

BY the 13, & 14. Car. II. c. 3. it is provided, That no Dwelling House of any Peer of this Realm, is to be Searched for Arms, but by immediate Warrant from the King, under his Sign Manual, and in the Presence of the Lieutenant, or one Deputy Lieutenant of the County. A Lord Spiritual is Privileged by the same Proviso, as well as a Lord Temporal.

PRIVILEGE XXXI.

Search for pro-
hibited Books,
Conventicles,
&c.

TH E House of a Peer, cannot, in the Case of prohibited Books, of Conventicles, &c. be entered by Officers of Justice, without a Warrant under the King's own Hand, and the Hands of six of his Privy Council, whereof four to be Peers of the Realm. 13, & 14. Car. II. c. 3. A Bishop as a Peer of the Realm, ought to have the Privilege, given by that Act.

PRIVILEGE XXXII.

Affirmment to-
wards the stand-
ing Militia.

NO Peer of this Realm, ought to Tax'd, or Assessed towards the Standing Militia, but by six or more of themselves. 13, & 14. Car. II. cap. 3. The Bishops, as Lords of Parliament, ought, in the same manner, to be Tax'd, as Noblemen are.

PRIVILEGE XXXIII.

Wearing of
Swords.

IN the 21st. Year of King Edward the Third, a Proclamation Issued, that no Person should bear any Arms within London, and the Suburbs, or in any place, between the said City, and Palace of Westminster, except such of the King's People, as he shall appoint, to keep the King's Peace, and the King's Ministers, according to the Statute of Northampton; yet Earls and Barons may wear their Swords, except in the King's Presence, and place of Council. 21. E. 3. n. 1. Cotton.

PRIVILEGE XXXIV.

IF the King, upon the Creation of any Peer of the Realm, Duke, Marquess, Earl, Viscount, or Baron, do (as the manner is) by his Letters Patents, give unto such new-created Nobleman, an Annuity or Rent, for the Support of his Degree, which they call Creation Money, this is so annex'd unto the Dignity, that by no Grant, Assurance, or any manner of Alienation, it can be given from the same, but is still incident, and a Support of the same Creation. *Dyer, fol. 2.*

PRIVILEGE XXXV.

THE Supreme Legislator of this Nation, is so tender of the Honour, Credit, Reputation and Persons of the Nobility, that there is a Law purposely framed, (namely, 2. R. II. c. 5.) to Obviate, Withstand, or hinder all Offence, by false Reports, or Lies, whereby any Scandal to their Noble Persons may arise, or Debate, and Discord, between them and Common Persons; and because it is to Defend them, it is called Scandalum Magnatum. *Cowel's Interpreter verbo, Scandalum Magnatum. Exposition of Terms of the Law, lib. 2. 69. a. and Minshew, 647.* An Action de Scandalis Magnatum, lies as well in the Case of a Spiritual, as a Temporal Lord of Parliament.

Notes upon this PRIVILEGE.

1. Besides the Penalties assign'd to be inflicted upon Transgressors, by the Acts of *Westm.* 1. c. 33. 2. R. II. c. 5. & 12. R. II. c. 11. Every Nobleman and Peer of the Realm, against whom any Scandalous Words, false News, or Lies be spoken, may prosecute against the Offender, an Action, *De Scandalis Magnatum*, and recover Damages against him.
2. If a Man do write unto another Scandalous Words, and Reports, touching a Nobleman, and this Letter be Signed with his Seal, and Subscribed with his Name; yet upon this Letter, shewed upon Evidence, the Nobleman may recover Damages, in an Action, *De Scandalis Magnatum*, whereof you may see two Precedents in *Crompton's Justice of Peace*. 85.
3. The Opinion of some Men hath been, that a Countess, Baroness, or other Woman of great Estate, cannot maintain an Action, *De Scandalis Magnatum*, because the Statute of 2. R. II. c. 5. speaks but of Prelates, Dukes, Earls, Barons, &c. by which words they conceive, the meaning of the Makers of that Statute, was only to provide in that case for Lords, and not for Women of Honour. *Crompton's Justice of Peace*, 45. B. Dodridge's Nobility, pag. 167. Tit. Noblewomen. Dr. Chamberlain's *Anglie Notitia*, pag. 358. 1. part, Edit. 15th. 1684.
4. There is a Difference taken, between an Action on the Statute of *Scandalum Magnatum*, and a Common Action: The words in one Case shall be taken in *mitiori sensu*; and in the other, in the worse sense against the Speaker, that the Honour of such Great Persons may be preserved. 1. *Vent. fol. 60. Earl of Peterborough's Case*. 1. *Mod.* 232.
5. The Earl of Stamford brought an Action on the Statute of 2. R. II. *de Scandalis Magnatum*, and had Judgment: And the Defendant brought a Writ of Error, Returnable in the Exchequer Chamber; and it was moved, that this Writ of Error shall not be allowed, because the Statutes do not extend to this Action; and of this Opinion was all the Court; and they said, that so it was adjudged in *Nevil*, and *South's Case*, and in the Lord *Sayer's Case*. *Sylderfin*, 1. part, 143. *E. of Stamford, v. Nedham*.

PRIVILEGE XXXVI.

AT the Common Law, it was Lawful for any Nobleman, or Ignoble, to retain as many Chaplains as he would, for their Instruction in Religion, but by a Statute made H. VIII. c. 13. A Restraint was made, and a certain number only allowed to the Nobility, and such Chaplains, for their Attendance have Immunities, as by the Statute as large may appear, viz. Every Duke may qualify six Chaplains, every Marquess and Earl, five a piece, every Viscount four, and every Baron three.

Every Archbishop, and Bishop, are allowed a certain number of Chaplains, who for

Ar-

Attendance have Immunities as other Chaplains have, an Archbishop may have Six Chaplains, and a Bishop Four Chaplains.

Notes upon this **PRIVILEGE B.**

A Baron created an Earl, &c. shall have but only so many Chaplains as an Earl, &c. might have.

1. If a Baron is to be created an Earl, &c. yet within the Act 21. H. VIII. he can have but only so many Chaplains as an Earl might have, for altho' he have divers Dignities, yet he is still but the self same Person, to whom the Attendance, and Service should be done, & sic de similibus. Co. lib. 4. fol. 118. Acton's Case.

An Earl retaining a Chaplain and before Advancement, that Peer is Attainted of Treason, the Retainer is determined.

2. If an Earl, or Baron retaineth a Chaplain, and before his advancement, he be attainted of Treason, there the Retainer is determined, and after the Attainder such Chaplain cannot take a second Benefice; for tho' his Lord be still living according to Nature, yet after the Attainder, he is a dead Person in Law, and therefore out of the Case to have Privilege for himself, or for his Chaplains. Exposition of Terms of the Law, fol. 57. a, b. Tit. Chaplaine. Co. lib. 4. Acton's Case.

A Baron has Three Chaplains, each of which has Two Benefices, and then the Baron dies, yet they shall keep those Benefices with Cure.

3. If a Baron have Three Chaplains, and every one of them, have Two Benefices, and after the Baron dies, yet they shall enjoy those Benefices with Cure, which were lawfully seised in them before; but in this Case, though the said Chaplain be Resident upon one of his Benefices, yet now he is become punishable for being Non-resident upon the other. Co. lib. 4. fol. 119. Acton's Case.

If Peers of the Realm do retain as many Chaplains as are allowed by the Statute, and then upon request retain more, they that are first retained shall only have Privilege.

4. A Baron, or others of Degree of Honour, retains such number of Chaplains as are allowed by the Statute, and after, upon request, the said Noble Person doth retain more Chaplains; In this Case they, who are first retained, shall only have privilege, *Nam qui prior est tempore, potior est jure.* Co. lib. 4. fol. 90. Drurie's Case.

A Noble Man retaining Chaplains above number, whether upon the dying of any of his first Chaplains, the next retained shall succeed.

5. If a Nobleman do retain Chaplains (above the Number) at several times, if any of his first Chaplains die, the next that was then retained, shall not succeed, for his first Retainers is void; and therefore in this Case it doth behove him, to have a new Retaining after the death of the Predecessor, and before his advancement. Co. lib. 4. 90. Drurie's Case.

A Lord, that is to have but Three Chaplains, retains Six, and all six presented to six several Pluralities, the Three that are first advanced, are only warranted by the Statute.

6. If a Lord, who is not allowed but Three Chaplains, retain Six by his Letters Testimonial, and all Six are presented to six several Pluralities; the Three, who are first promoted are warranted by the Statute, and yet the Retainer was not according to the Statute, but in equali jure melior est Condicio possidentis, Dyer, 312.

A Nobleman retaining as many Chaplains as he ought, afterward upon dislike, discharge some of them, he cannot retain others, by it to give Privilege to them during the Lives of them so retained.

7. If a Nobleman retain such a Number of Chaplains, as is by Law allowed him, but afterward upon some dislike, or other Cause, do discharge some of them from their Attendance, or Service; the Lord in this Case cannot retain others, thereby to give them privilege, during the Life of them so retained, and discharged: and the reason thereof is, because the first Chaplains were lawfully retained, and by Virtue thereof during their Lives might purchase Dispensations, to have advantage, according to the Statute; and therefore if the discharge of their Service and Attendance might give a Liberty to the Lord, to retain others, by such means the Lord might advance Chaplains without number, by which the Statute should be defrauded; and the said Statute must be construed strictly against Non-residents and Pluralities, as a thing prejudicial to the Service of God, and the ordinary Instruction of God's People. Co. lib. 4. fol. 90. Drurie's Case.

If a Baronefs Widow retains one or two Chaplains according to the Statute, the Chaplains, as long as the Retainer is in force, and the Baronefs continueth a Baronefs, may well take two Benefices. There is a difference taken betwixt a Noble Woman by Marriage, and one that is Noble by Descent, as to the point of Retaining Chaplains.

8. The Wife of a Baron, during the Coverture cannot retain a Chaplain, yet when a Baronefs Widow, retains One or Two, according to the Proviso of the Statute of 21. H. VIII. the Retainer is the principal matter, and as long as the Retainer is in force and the Baronefs continueth a Baronefs, the Chaplains may well take Two Benefices by the express Letter of the Statute; for it sufficeth, if at the time of the Retainer the Baronefs were a Widow: And herein this Rule is to be observed of a Woman, that attaineth Nobility by Marriage, as by Marriage of a Duke, Earl, or Baron, &c. For in such Case, if she afterward marry under the Degree of Nobility, by such Marriage

with one, that is not Noble she loseth her Dignity, whereunto she had obtained by Marriage, and after such later Marriage, the Power to retain a Chaplain is determined: But otherwise it is, where a Woman is Noble by Descent: for there her Retainer before, or, after the Marriage with one that is not Noble, shall be in force, and is not countermanded by the Marriage, nor determined by her taking of a Husband under the Degree of Nobility. *Co. lib. 4. fol. 118. B. Acton's Case.*

PRIVILEGE XXXVII.

THE Appellation, or Title of Lord, is due, and given to all that are Temporal Barons, Title of Lord and Peers of the Realm. The Bishops have their Title of Lord, as well as the Nobility.

Notes on this PRIVILEGE.

1. Mr. Camden says, That in the Saxon Glossary of *Alfricus*, among the Vocables, or Terms of Honour, the word *Dominus* is translated *Lasford*, which we have contracted short into Lord. *Hic Britania, fol. 168. Tit. Barons.* From whence the word is derived.

2. The Title of Lord, is given only of Courtesie to all the Sons of Dukes and Mar-
queses, and to all the Eldest Sons of Earles, and to none under; but they are not so
stiled in Legal Proceedings, or in the King's Courts of Justice. *Br. Treason 2. Co. 3. Inst. f. 30.* Title of Lord to what Persons given but by Courtesie.

PRIVILEGE XXXVIII.

NO Demesne, or proper Cart, for the necessary use of our greater Nobility, as Dukes, Average, or, Marqueses, Earls, Viscounts and Barons, all Lords of Parliament, for, and about
the Demesne Lands of any of them, ought to be taken for the King's Carriage; but they are
exempted by the ancient Law of England from any such Carriage. *Co. 2. Inst. 35.* Exemption of Carts from the King's Carriage.

The Carts of Bishops are as well exempted from the King's Carriage, as those of the Nobility, Lords of Parliament are.

PRIVILEGE XXXIX.

THE Baronage of England did affirm, That their Sovereign Lord the King, ought not
to marry, without their consent. *Buck's History of R. III. pag. 118. Edit. 1647.* Marriage of the King, ought to be with the consent of the Peers.

PRIVILEGE XL.

IT is a Privilege, appertaining to the Temporal Peerage of the Realm, to have Wine Cust- Wine Customs
tome-free, as a Tun of Wine to every Earl, and to the rest proportionably, &c. This
Exemption belongs as well to the Spiritual Lords, as to the Temporal Peers of the Realm.

PRIVILEGE XLI.

IN all Cases upon Non-suits or other Judgments, Earls and Barons shall not be amerced, Amerciament
but by their Peers, Lords of Parliament. And after the manner of their Offence. *Magna Charta, c. 14.*

Notes on this PRIVILEGE.

1. Altho' the Statute of *Magna Charta*, be in the Negative, viz. *Non nisi secundum mo-* The Amercia-
dum delicti, yet long usage hath reduced the Amerciament of the Nobility to a certainty, ment of Noble-
namely, A Duke and Marqueses 10 l. an Earl, Viscount and Baron 5 l. *Co. 2. Inst. fol. 28.* men, how reduc-
Finch's Law, lib. 3. c. 1. p. 184. Saunders Reports f. 227. Noel, v. Nalfon. ed to a certain-
ty.

2. By the same Statute it appeareth, that such Amerciaments should be assayed per Amerciaments
pares suos. But for that it were troublesome to assemble Barons, or Peers of the Realm of the Nobility,
for so small a matter, such Amerciaments in times past hath been assayed by the Barons of are now assayed
the Exchequer, *Bracton lib. 3. Tract. 2. de Coronâ, cap. 1. fol. 116. B. Co. lib. 8. fol. 38.* by the Barons of
Griesley's Case. the Exchequer,
and not per
Pares, and why.

A Peer of the Realm, and a Common Person joining in an Action, if Non-suited, they are to be severally Amerced. 3. If a Nobleman, and a Common Person, join in an Action, and become Non-Suit, they shall be severally Amerced, viz. the Nobleman at 100 s. and the Common Person according to the Statute: * Therefore when a Nobleman is Plaintiff, it is Policy rather to discontinue the Action, than to be Non-Suited. Co. 2. Inst. 28. * A Nobleman being Plaintiff, it is better to discontinue the Action, than meet with a Non suit.

PRIVILEGE XLII.

House of Peers the Supreme Court of Judicature. **T**HE Peers of the Realm, during the time of Parliament, are the Supreme Court of Judicature in this Nation, not only to judge, whether Matters, presented to them by the Commons, be fit, or requisite for the King to pass into Laws, but also of Writs. of Error, (as has been said before,) and of Matters of Fact, either not determinable in other Courts, or else when, though they are determinable, yet in regard of Nicety, or special Matter, they cannot well discern, or judge. Mr. Roger Coke, Lib. 3. cap. 3. of the Municipal Laws of England, pag. 111. Edit. 1662. The Bishops, being Peers of the Realm, and Lords of Parliament, do rightfully Claim, to be Partners in the Supreme Judicature, with the Temporal Lords.

PRIVILEGE XLIII.

The Sitting of the Lords Covered. **T**HE Members of the House of Commons are always to stand Bare-headed, when they repair to the Lords House, upon the first day of the Parliament, upon Conferences, upon Passing Bills, upon Messages, or upon any other Occasion; whereas it is a Privilege of the Lords, as well Spiritual as Temporal, always to sit Covered. Mr. Prin in his Preface to Cotton's Tower Records.

PRIVILEGE XLIV.

Hunting in the King's Forest. **N**oblemen, Barons of Parliament, being sent for by the King's Writ, or Letter, or by his Messenger, to come to Court, or to Parliament, or to appear before the Council Board, or to his Court of Chancery, may, both Coming and Returning by the King's Forrest, or Park, kill one or two Deer. Charta de Foresta, cap. 11. Crompton's Courts, fol. 167. B. Co. 4. Inst. fol. 308. The Lords Spiritual also have the liberty to Hunt in the King's Forests or Parks, going from or coming to the King, upon his Order.

Notes upon this PRIVILEGE.

Though the Title and Degree of Duke, Marquess and Viscount, were not when the Statute was made, yet they are within that, and do enjoy the Privilege of Hunting in Forests. 1. The Statute of Charta de Foresta, c. 11. doth speak only of Earls and Barons; but if a Duke, Marquess, or Viscount, which are Lords of Parliament, be coming towards the King, by his Commandment, they also ought to have the Benefit of this Chapter or Article. Crompton's Courts, fol. 167. B. Co. 3. Inst. fol. 308.

King of Scots, and Prince of Wales are to have the Privilege of Hunting. 2. If the King of Scots, or Prince of Wales, do come to the King, by his Commandment, to do their Homage, or other such Things, which a Subject ought to do, be shall have the Benefit of this Article. Crompton's Courts, fol. 167. B.

The Eldest Son of a Duke, Marquess, or Earl, cannot claim the Privilege. 3. The Eldest Son of a Duke is an Earl, and the Eldest Son of an Earl is a Baron, and every Son of a Duke or Marquess is a Lord: But it seemeth, that they cannot take the Benefit of this Statute; for they are not Peers of the Realm and Lords of Parliament. Crompton's Courts, fol. 167. B.

A Dutches, or a Countess, whilst Unmarried may Hunt. 4. If a Lady, which is Married, come through the Forest, She shall not take any thing: But a Dutches or Countess shall have the Advantage, during the time that she is Unmarried. Crompton's Courts, fol. 167. B.

Earls, or Lords of Ireland, or Scotland, enjoy not this Privilege. 5. If an Earl, or Lord of Ireland, or of Scotland, come to the King, by his Commandment, he cannot have the Benefit of this Statute; for 'tis not understood, but to the Lords of England, or Prince of Wales, &c.

A Scire Facias going forth against a Lord, &c. to appear before the Justices of Common Pleas, or before the Barons of the Exchequer, and he comes upon that, he shall &c. to appear before the Justices of Common Pleas, or Barons of Exchequer, such a Peer cannot have the Benefit of the Statute. 6. If a Scire facias go forth against a Lord, &c. to appear before the Justices of the

not have the Benefit of this Statute, for he doth not come unto the King, and the Words be, *Veniens ad nos*: And all the Proceſs made out of the Chancery, and King's Bench, are, *Quod ſit coram Nobis*. *Mantwood's Foreſt Laws*, cap. 181. *Crompton's Courts* 167. b.

7. The Lords, which come to Viſit the King, after the Death of his Predeceſſor, (tho' not ſent for) ſhall have the Privilege of Hunting in the King's Foreſt. *Crompton*, fol. 168. a.

8. The Statute aforeſaid doth give License to Kill, or Hunt in the King's Parks, and Chafes, tho' the Letter of the Statute be, *Transientes per Foreſtam Noſtram*, paſſing by our Foreſt. *Crompton's Courts*, fol. 168. a. Co. 4. Inſt. f. 308.

The Privilege of Hunting belongs to ſuch Lords who come to viſit the King upon the Death of his Predeceſſor. To the King's Parks and Chafes, the Privilege of Hunting doth extend.

PRIVILEGE XLV.

A Temporal Lord of Parliament, ſhall not be Tried in Criminal Cauſes, viz. Treafon, Felony, or Miſpriſion of them, but by thoſe who are Noble, and Peers of the Realm. *Co. Lib. 12. fol. 95. Counteſs of Shrewsbury's Caſe. Br. Trials* 103, & 142. *Corone* 153, & *Jurors* 48. 10. E. IV. 6. *Camden's Britannia*, fol. 169. *Stamford's Pleas of Crown*, Lib. 3. c. 1. Co. Lib. 9. 30. B. *Caſe of the Abbot of Strata Marcella*. Co. 2. Inſt. fol. 48. *Magna Charta*, cap. 29. Co. Lib. 12 fol. 92. *The Lord Vaux's Caſe*, *Finch's Laws*, Lib. 4. c. 36. pag. 412. Co. 3. Inſt. fol. 89.

Trial per Peers in Criminal Cauſes.

Notes upon this PRIVILEGE.

1. The Antiquity of this Kind of Trial, by the Opinion of ſeveral Authors, is grounded from the Statute of *Magna Charta*. cap. 29. beginning thus, *Nullus liber homo, &c. nec ſuper eum ibimus, nec ſuper eum mittemus, niſi per legale iudicium parium ſuorum*: But other Writers take it to be more Antient, than the Time of H. III. as brought into the Realm with the Conqueror, being answerable to the *Norman* and *French* Laws, and agreeable to the Customs Feudal, where almoſt all the Controverſies, ariſing between the Sovereign and his Vaſſal, are tried *per iudicium Parium ſuorum*.

The Antiquity of this kind of Trial per Peers.

2. If a Peer of the Realm, upon his Arraignment of Treafon, do ſtand mute, or will not answer directly, Judgment ſhall be given againſt him, as a Traitor Conviſted, and he ſhall not be preſſed to Death, and thereby ſave the Forfeiture of his Lands; for Treafon is out of the Statute of *Westm. 1. c. 12. 15. E. 4. 33. Dyer*. 205, & 300. Co. 2. Inſt. fol. 177. of *W. I. c. 12*. But if he be Arraign'd upon an Indictment of Felony, he may be Mute.

A Peer ſtanding mute on Arraignment of Treafon, judgment is to be given as a Traitor conviſted: But upon Arraignment of Felony, he may be mute.

3. Every Lord of Parliament, who hath Voice in Parliament, and called thereunto by the King's Writ, ſhall not be tried by his Peers, but only ſuch as ſit there, *Ratione Nobilitatis*, as Dukes, Marqueſſes, Earls, Viſcounts, or Barons, and not ſuch as are Lords of Parliament, by Reaſon of their Baronies, which they hold in the Right of the Church, as Archbiſhops and Biſhops; but they ſhall be tried by the Countrey, that is by Freeholders; for that they are not of the Degree of Nobility. Co. 3. Inſt. fol. 30. *Stamford's Pleas of the Crown*, Lib. 3. c. 62. fol. 153. *Crompton's Courts*, fol. 12. B. *Br. Trials* 142. in fine.

Temporal Lords of Parliament, ſhall only be tried by their Peers.

4. Tho' Noblemen, Lords of Parliament, are not to be tried but by their own Peers, yet this only takes Place in Cauſes of Treafon, Felony, or Miſpriſion of them, at the Suit of the King, by way of Indictment: But otherwiſe it is in the Caſe of Appeals, at the Suit of the Party: And therefore, when a Peer of the Realm is Arraigned in an Appeal of Felony, he ſhall not have the Privilege to be try'd by his Peers, Lords of Parliament, as he ſhould have in the Caſe of an Indictment, but he ſhall undergo the Ordinary Trial of Twelve Men, Freeholders. *Stamford Lib. 3. c. 1. Br. Trials* 142, & *Jurors* 48. in fine 10. E. IV. 6. 13. H. VIII. 11, 12. *Br. Tit. Treafon*, 29, 33. *Holbourn's Reading's Lecture*, pag. 68. pr. 1681. *Br. Corone* 153. Co. 3. Inſt. 30. & 2. Inſt. 49.

Trial de Peer del Realm arraign'd ſit Indictment et appeal diversly.

5. In the Caſe of a *Premunire* though it be at the King's Suit, a Nobleman ſhall not be tried by his Peers, Lords of Parliament, but by a common Jury of Free-holders. Co. lib. 12. fol. 92. *The Lord Vaux's Caſe*, *Bulſtrode*, 1. part. 198, 199. Co. 3. Inſt. 30.

In the Caſe of a Premunire, a Peer ſhall not be tried by his Peers but by a Common Jury.

6. If a Nobleman be Indicted and cannot be found, Proceſs of Outlawry ſhall be awarded againſt him, *per Legem Terræ*, and ſhall be Outlaw'd, *per iudicium Coronatorum*, but he ſhall be tried, *per iudicium Parium ſuorum*, when he appears, and pleads not Guilty, and puts himſelf upon his Peers. Co. 2. Inſt. 49. & 3. Inſt. 31. *Stamf. 1. l. Cor.* 130.

In Criminal matters, a Nobleman may be Outlaw'd, if he cannot be found.

A Nobleman of a foreign Country shall not be tried per Pares, but by a common Jury.

7. Albeit a Man be Noble, and yet no Lord of Parliament of England (as if he be a Nobleman of Scotland, of Ireland, or of France, &c.) he must be tried by Knights, Esquires or others of the Commons. *Co. lib. 3. fol. 30. Co. 2. Inst. 48. Co. lib. 9. The Lord Sanchar's Case.*

Eldest Son of a Duke, Earl, &c. cannot be Tried by Peers of a Realm.

8. If the Eldest Son of a Duke, Marquess, Earl, &c. be Arraign'd for Treason, or Felony, he is to be tried by a common Jury. *Co. 3. Inst. 30. Crompton's Courts, fol. 19. a. b. 38. H. VIII. Treason, Br. 2. The Case of Henry Howard, Earl of Surrey, Son and Heir of the Duke of Norfolk.*

The Tryal of the Wives of Lords of Parliament, must be in Cases of Treason or Felony, as Peers of the Realm.

9. Dutcheesses, Marchionesses, Countesses, &c. Sole, or Married, are to be tried in Cases of Felony or Treason, as Peers of the Realm. *Stat. of 20. H. VI. c. 9. Co. lib. 6. Countess of Rutlands Case. Crompton's Courts, fol. 18. B. Stamford, 153. Crompton's Courts, f. 33. B.*

A Lord of Parliament of Ireland, committing Treason in Ireland, cannot be tried in England.

10. If a Peery, a Lord of Parliament of Ireland commit Treason in Ireland, he cannot be tried in England by the Statute of 26. H. VIII. c. 2. & 5, & 6. E. VI. c. 11. For he is not a Subject of England but of Ireland, and the Tryal in Ireland is by Parliament and not per Pares. *Dyer, 260. B.*

In Treason or Felony the Tryal of a Peer must be by special Commission before a Lord Steward.

11. In Treason or Felony, a Tryal of a Peer of the Kingdom is to be by special Commission before the Lord High Steward; and those that pass upon him, to be none but Peers: The proceeding is with great Solemnity, the Lord Steward sitting under a Cloath of Estate, with a white Rod of Justice in his Hand, and the Peers may confer together, but are not any ways shut up; and are demanded by the Lord Steward their Voices One by One, and the Plurality of Voices carries it. *Lord Bacon's Cases of Treason, cap. 2. Vide more of the grand Solemnity of the Tryal of a Peer in Crompton's Courts, fol. 82. a. 13. H. VIII. 1. Stamford, 152. 1. H. IV. 1. and in Sir Thomas Jones's Reports f. 51, & 55. Signior Case.*

A Lord of Parliament must plead his Pardon in the King's Bench.

12. If a Nobleman be Indicted in the K. B. or, the Indictment removed thither, he may plead his Pardon there before the Judges of the K. B. and they have power to allow it, but he cannot confess the Indictment, or plead *Not Guilty* before those Judges, but before the Lord Steward. *Rolls 1 part. 297. Roy, v. Signior Norris. Co. 2. Inst. fol. 49*

Upon a Peers pleading not Guilty, he cannot wave his Plea and claim his Privilege,

13. If a Peer of the Realm plead *Not Guilty*, to an Indictment, he shall not wave his Plea, and claim his Privilege, to be Tried by his Peers. *Dalison's Reports, fol. 16.*

A special Verdict must not be allowed, upon a Peers Tryal.

14. No special Verdict can be given in a Tryal per Pares. *Hutton's Reports, 116. The Lord Audley's Case.*

Upon the Arraignment of a Peer the Judges are covered.

15. At the Arraignment of the Lord Audley the Judges Assisant, sat with their Heads covered, as the ancient use hath been. *Hutton's Reports, 116, 117. Lord Audley's Case.*

At a Peers Tryal in Parliament, the Lords sit covered, and the Commons not so.

16. At the Tryal of the Earl of Strafford in Parliament time, the Lord's of the Upper House sate Covered, the Members of the Lower Uncovered. *Nalson's Collection, 2. Vol. pag. 37.*

The Axe not to be carried before the Prisoner a Peer, but only when put upon his Jury.

17. At the Entrance of the Lieutenant of the Tower, with his Prisoner the Lord Strafford, the Porter of the Hall, whose Office it is, enquired of Mr Maxwell, whether the Ax should be carried before him, or no? who answered, that the King had expressly forbidden it; nor was it ever the Custom to use that Ceremony, but only when the Party accused was to be put upon his Jury. *Dr. Nalson's Collection, 2. Vol. fol. 37.*

18. Waterhouse, Clerk of the Crown, said, that upon the Arraignment of the Lord Dacres of the North, in the time of H. VIII. all the Justices of England resolved three points:

No certain number requisite if above Twelve.

1. That no certain number of Peers is requisite, if they be above Twelve, but less than Twelve, they may not be

2. If the Peers are Twelve, and they differ in their Verdict; there ought to be Twelve at least to agree to find the Lord Guilty, or otherwise he shall not be Guilty, altho' that the greater Number of the Peers empannel'd find him Guilty. *Twelve at least to agree in finding a Peer Guilty.*

3. That the Lord Steward cannot adjourn his Commission, but is to dissolve it; yet a Precedent there was, in the time of H. VIII. that he adjourn'd his Commission to the next day only, and then dissolv'd it. *Moor's Reports, 622. m. 844. Vide Co. 3. Inst. 31. Whether the Lord Steward hac vice may adjourn his Commission.*

19. In every Case of Treason or Felony newly made by Statute Law, the Lords of Parliament shall have their Tryals by their Peers, notwithstanding that the Statute provides not for it by express Words, so that the Proviso incerted for their Tryals in such Cases is said by *Stamford* to be needless, *Stamford, 153.* and the Tryal per Pares is given by *Magna Charta, cap. 29. Idem 152. Crompton's Courts, fol. 19. B.* And *Sir Edward Coke* tells us, That if he be Nobleman, and Lord of Parliament, he shall be tried by his Peers, albeit there be no provision for it; for of Common Right, in Case of Treason, Felony, and misprision of Treason or Felony, he is to be tried by his Peers. His Comment on the Statute of 1 Jac. c. 11. against Polygamy. But maugre what the prementioned Lawyers have written, the Reader may find a Proviso incerted in many Acts of Parliament (by our Legislators, for the surer preservation, and continuance of this Privilege,) Namely; 33. H. VIII. c. 12, & 23. 35. H. VIII. c. 2. 1. E. VI. c. 12. 13. Eliz. c. 2. 1. Eliz. c. 1, & 2. 5. Eliz. c. 1. 23. Eliz. c. 1. 18. Eliz. c. 1. 23. Eliz. c. 1. 1. Jac. I. c. 1, & 12. 3. Jac. I. c. 4. 13. Car. II. c. 1. 13. Car. II. c. 6. 12. Car. II. c. 9. 13. Car. II. c. 18. 16. Car. II. c. 4. *In all Cases of Treason or Felony, made de novo, by Statute, a Lord is to have his Tryal per Pares tho' no provision be in the Statute. Co. 3. Inst. 39. Notwithstanding the Proviso's have been incerted.*

20. It was resolved by the Judges in the Parliament holden the 2. Car. I. upon Conference concerning the Lord *Digby*, That when any Peer shall be proceeded against for Treason, that ought to be by Indictment, and that being done, then the King is to appoint a Peer to be Steward for the time, and to proceed to Arraign him, or otherwise to transmit this Indictment by *Certiorari*, to the Parliament, and there to proceed, or otherwise to prefer a Bill in the Parliament, which ought to be passed by both Houses, and it is an Attainder by Parliament, and so it was done, 5. R. II. 54. *Hutton's Reports, 131. Lord Digby's Case.* *How many ways a Peer in Criminal matters may be proceeded against.*

21. And last Note, relating to the privilege of Tryal per Pares, shall be borrowed of that most Noble Peer, and Lord of Parliament, the late Earl of *Clarendon*, who in his survey of the *Leviathan* expresseth himself in these very Words; "I am glad" (says his Lordship) that Mr. *Hobbes* is pleased with any part of the Administration of Justice in his own Countrey; and he might have observed that great Privilege of the Lords in England, of being tried in all Capital Crimes by their Peers, by Men of their own Quality, and Condition to be a greater Privilege than the Nobility of any Nation in Europe enjoy. The Grandees of Spain, and the Dukes and Peers, and Marshalls of France, in those Transgressions undergo the same Forms of Justice, and are tried by the same Judges, as the meanest Peasant is for the like, or the same Crime: And tho' he calls it, and says, it hath been ever acknowledged as a Privilege of Favour, yet they look upon it as Privilege of Right, of which they cannot be deprived by the Word, and Authority of the King. And it may be, he would be hardly able to bring this Privilege under his Original Institution of Government; since probably Men being then all Equal, they would never have consented to such a difference, rather than Equality in the Form of Justice that was to be exercised towards them; and he values it too lightly, who thinks it can be taken from them by any Arbitrary Power. His Survey of the *Leviathan*, cap. 23. pag. 104, & 105. Edit. 1676. Oxon. *The Earl of Clarendon's words, touching the great Privilege of the Lords, of being tried in Capital Cases by their Peers.*

PRIVILEGE XLVI, and Last.

IN Tryal of a Peer, the Lords of Parliament shall not Swear, but they give their Judgment, Super Fidem, & Ligeantiam Domino Regi debitam; So that their Faith, upon Honour and Allegiance stands in Equipage with an Oath, and in the Case of a Common Person in Trial of Life. *Col. lib. 12. 95. Countess of Shrewsburies Case, Camden's Britannia, pag. 169. Engl. Edit. 1610. Co. 2. Inst. 49, & 3. Inst. 29. Crompton's Courts, fol. 13. a. 1. H. IV. 1. Stamford 152. Blount verbo Tryal.* *Verdict given only.*

Notes upon this PRIVILEGE.

*The Reason why
Lords of Parlia-
ment shall give
their Verdict*

1. The Reason, (saith a very Learned Lawyer) why Peers of the Realm, are to proceed without Corporal Oath, is, because the Law supposeth them of such Integrity; as not upon Oath, they will do for Justice, that others are compell'd to by their Oaths. *Lord Coventry H. L. History of in his Speech to the Peers, at the Arraignment of Mervin Lord Audley, Earl of Castle-Charles I. pag. haven.*

120.

*What great Re-
gard the Law
has to a Peer's
Word.*

2. Concerning this Privilege of giving a Verdict upon Honour, and not upon Oath, another Lawyer speaks thus; You see the great Regard the Law hath to the Word of a Peer of the Realm, when he speaketh upon his Honour; even in a Case concerning the Life of Man, and that of a Peer; and therefore ought they much more to keep their Words, and Promises in smaller Matters, when they engage their Honour for a fast Cause, or Consideration. *Crompton's Courts, fol. 13. a.*

*A Peer of the
Realm shall an-
swer in the Star-
chamber, upon
his Oath.*

3. Though upon the Trial of a Peer, the Lords of Parliament shall not Swear, yet it hath been Adjudged, that they must answer upon Oath, and not upon Honour only, in all Courts as Defendants, as it appears in the Earl of *Lincoln's* Case, wherein it was moved, whereas Sir *Henry Fines* Knight, had exhibited his Bill in the Star-chamber, against the Earl of *Lincoln*, for divers Riots and Misdemeanors, and the Earl of *Lincoln* had taken Commission forth, to put in his answer upon Oath in the Countrey, and he offered before them his Answer upon his Honour, but would not put it in upon Oath, because he was a Peer of the Realm; which matter being now reported by the Commissioners, it was now moved by the King's Solicitor, to have the Resolution of the Judges: And it was held by all the Justices of both Benches, and all the Barons of the Exchequer, (in the presence of a very great Assembly, of the Lords, and divers others of the Privy Council in the Star-chamber?) that the Lords, in Cases Criminal, (especially where the King is Party) ought to put in their Answer upon Oath; and in all Cases, where they are to be Witnesses betwixt Party and Party, they ought to be Sworn: The Lord Keeper said, *Quod in Judicio non creditur nisi Juratis*, and that he caused Precedents to be searched, and had found divers, since the first of Queen *Eliz.* wherein Peers of the Realm being Impleaded in Chancery, or Star-chamber, or Court of Wards, have been always Sworn: And he said, when a Peer affirms any thing, which is not true, upon his Honour, there is not any Remedy; but if he affirms that which is false, upon his Oath, there is Remedy, by the Statute of 5. *Eliz. c. 9. against Perjury*; wherefore they all resolv'd, that the Earl of *Lincoln* ought to be Sworn; and of the same Opinion were all the Lords and Counsellors, which they delivered *Seriatim, nullo Contradicente*, because it is *Juramentum Purificationis*, and not *Promissionis*: And Princes are sworn to all their Leagues and Confederacies, which is called *Juramentum Confirmationis*, neither is it any Diminution to the said Earl's Honour, to be Sworn about that, which he would not, should be put upon his Honour. *Cro. Car. 64. Hutton's Reports, 87. and Sir William Jones's Reports 152. The Earl of Lincoln's Case in the Star-chamber.* Since this Resolution of all the Justices, which was given, *Anno 2. Car. 1626.* the Lords, *Anno 1628.* in their House, did declare, *That the Nobility of this Kingdom, and Lords of the House of Parliament, are, of Antient Right, to Answer in all Causes as Defendants, upon Protestation of Honour only, and not upon the Common Oath.* And in the Year 1640. the Earl *Marshall* reports the Opinion of the Committee, to whom the Consideration of the Protestation of the Peers of this Realm upon Honour, was referred, upon some doubts, that had arisen, in a former Debate of the House of Peers, upon a former Order to that purpose, as follows:

*Sir William
Jones, his Re-
ports, 154. F. of
Lincoln his
Case.*

*Thursday, De-
cemb. 31. 1640.
Order about
Peers making
Protestation up-
on Honour, not
upon Oath.*

Our Opinions are clear, and that, upon hearing divers Learned Men, of both Laws, speak, *That our Answers upon Honour only, can be no Impediment to the Common Justice of the Kingdom, but a just Preservation of our Antient Liberties; and therefore we offer it as our Unanimous Opinions, that our former Order may stand in full Force, which is Entered in hac Verba.*

*x. Vol. of Dr.
Nelson's Col-
lection, p. 703.*

" Ordered upon the Question, *Nemine Contradicente*, that the Nobility of this King-
dom, and Lords of the Upper House of Parliament, are, of Antient Right, to answer
" in all Courts, as Defendants, upon Protestation of Honour only, and not upon the
" Common Oath: And that the said Order, and this Explanation, doth extend to all
" Answers, and Examinations upon Interrogatories in all Causes, as well Criminal as
" Civil, and in all Courts and Commissions, whatsoever; and also the Persons of the
" *Widows Dawagers* of the Temporal Peers of this Land; and that the Lord Keeper of
" the Great Seal of England, for the Time being, or the Speaker of the Lords House,
" for the Time being, do forthwith give Notice of it, together with this Explanation, to
all

" all the Courts of Justice, and the Judges, Clerks and Registers of them, by causing
" our Former Order, with this Explanation, to be Recorded in all Courts, and that
" all Orders, Constitutions, or Customs, entered or practised to the contrary where-
" soever, be Abolished, and declared Void; and the Lord Keeper of the Great Seal,
" for the time being, or the Commissioners for the Great Seal, out of Parliament time,
" shall see all Practices to the contrary hereafter to be punished, with Exemplary
" Severity, to deter others from the like Attempts.

I shall close all, with what Doctor Chamberlain has said, touching the Lords Pro-
testation of Honour, in all Judicial Proceedings: His Words are these,

Though neither Civil Law, nor Common Law, allow any other Testimony to be Valid, but what is given upon Oath; yet the Testimony of a Peer of England, given in, upon his Honour, without any Oath, is esteemed Valid: And they were wont to be Examined upon their Allegiance, and the Loyalty of their Chivalry, and to put in their Answer to a Bill, super Honorem, (e) without taking an Oath: Though of Later Times, that Privilege, by the Negligence of some Lords, hath been infringed sometimes. His Tract Intituled, *Anglia Notitia*, or, the Present State of England, 1. part, pag. 301, & 302. Edit. 15th. pr. An. 1684. (e) If this

Dr. Cham-
berlain's
Sentiments;
touching the
Protestation
upon Honour
only.

answering Bills, super Honorem tantum, doth belong to Noblemen, as Peers and Lords of Parliament, why should it not be Incident to the Bishops, who are both Peers of the Realm, and Lords of Parliament.

A P O S T S C R I P T,

In Defence of the Rights and Privileges, of the Spiritual Lords of Parliament.

After Camden (in his *Britannia*, pag. 170. Eng. Edit. 1670) telleth us, That unto the Bishops, by Right, and Custom it appertaineth, as to Peers of the Kingdom, to be with the rest of the Peers personally present at all Parliaments whatsoever, there to Consult, to Handle, to Ordain, Decree, and Determine, in regard of the Baronies, which they hold of the King; And that ever since the Conquest, they have enjoined all the Immunities, that the Barons of the Kingdom did, Save only, they were not to be judged by their Peers; Of which Salvo, or Exception hear what another Author, Dr. Chamberlain, saith in his *Present State of England*:

" As for that common Assertion (says he) That no Lords of Parliament are to be
" tried by their Peers, but such as sit there, *Ratione Nobilitatis*; it is not only false, but
" frivolous in the Judgment of very many Judicious Men, And indeed, how absurd,
" and unreasonable must it needs be, (let all Men judge) that an Archbishop of
" Canterbury, who is acknowledged to be *primus par Regni*, should be tried by a com-
" mon Jury of Freeholders, when as the meanest Lay-baron, though Created but
" yesterday, may not be tried by any under Barons.

F I N I S.



Elenchus Authorum :

O R,

The NAMES of the AUTHORS Quoted in this Small
TRACT.

A nder son.	Davis.	Modern Reports
Bacon.	Dier.	Moor.
Baker.	Dodridge.	Nalson.
Bodin.	Elsing.	Owen.
Blount.	Finch.	Perkins.
Bracton.	Filmer.	Plowden.
Braudlatcht.	Fitzherbert.	Plutarch.
Britton.	Fleta.	Prinne.
Brooke.	Freretus.	Records of Parl.
Bucke.	Gratian.	Register.
Bulstrode.	Heywood.	Ridley.
Burnet.	Hobart.	Rushworth.
Coke Sir Edward.	Holbourn.	Rolls.
Coke Roger.	Hutton.	Syderfin.
Camden.	Jones Sir Will.	Saunders.
Chamberlain.	Jones Sir Thomas.	Stamford.
Clarendon, Earl.	Justinian.	Stiles.
Coventry.	Keble.	Terms of Law.
Cotton.	Lambert.	Ventris.
Croke.	Leving.	Womans Lawyer.
Compton.	Manwood.	Year-Books.
Dalison.	Mills.	Zouch.